

REMARKS

Claims 1-24 are currently pending in the application. Claims 1 and 21 are in independent form.

The Office Action objects to the disclosure because of several informalities on pages 4 and 12. Appropriate corrections of these informalities are made herewith.

The Office Action also objects to the drawings because structural detail that is essential for a proper understanding of the invention should be in the drawings. The Office Action also states that the locking means disclosed in claim 10 and the ball and socket joint disclosed in claim 11 are not shown in the drawings. Attached hereto are new Figures 6A and B, which more fully show the locking means and the ball and socket joint of claims 10 and 11. Support for these drawings is found throughout the specification. More specifically, support for these drawings is found on page 7, line 23, through page 10, line 12. In this section there is more fully described the locking means and the ball and socket joint of the present invention. Reconsideration of the objection is respectfully requested.

Claims 1-24 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicant regards as the invention.

The Office Action states that claim 1 recites the limitations "the shoulder turn" and "the golfer" and that there is insufficient antecedent basis for these limitations. In order to further prosecution, claim 1 has been amended to provide sufficient antecedent basis for all of the phrases used therein. Reconsideration of the rejection is respectfully requested.

Claim 2, according to the Office Action, recites the limitation "the takeaway in the back swing" and holds that there is insufficient antecedent basis for the limitation in the claim and also that the limitation is unclear. In order to further prosecution, claim 2 has been amended to provide both sufficient antecedent basis and to more clearly

establish how this limitation relates to the structure. Specifically, this limitation relates to a specific use of the structure. Reconsideration of the rejection is respectfully requested.

The Office Action states that claim 4 recites the limitation "arm is an elongate member" and holds that the limitation is grammatically incorrect. It is suggested that the phrase be changed to "arm is an elongated member." In order to further prosecution, claim 4 has been amended to include the suggested change. Reconsideration of the rejection is respectfully requested.

Claim 7, according to the Office Action, recites the limitation "means in adjustably" and holds that this phrase is unclear. Claim 7 has been amended to recite the limitation "means is adjustably," thereby clarifying what is intended by this claim. Reconsideration of the rejection is respectfully requested.

The Office Action states that the limitation "ball and socket joint" in claim 11 is not clearly shown in the drawings. A new drawing that is fully supported by the specification as originally filed is included herewith more specifically showing the ball and socket joint. Reconsideration of the rejection is respectfully requested.

According to the Office Action, claim 19 recites the limitation "the support member locates over" and holds that this phrase is grammatically incorrect. In order to make this limitation grammatically correct, the Office Action suggests changing the phrase to "the support member is located." In order to further prosecution, claim 19 has been amended as suggested and reconsideration of the rejection is respectfully requested.

Claims 1-7, 9, 12-16, 19, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Cole patent. Reconsideration of the rejection under 35 U.S.C. § 102(b), as anticipated by the Cole patent, as applied to the claims is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action states that the Cole patent discloses a golf swing indicator comprising attachment means for attaching a support member adjacent to the shoulder of a golfer, wherein the support member has a shoulder position indicator means/arm projecting outwardly therefrom and forwardly relative to the golfer, and that the golf training aid is used for indicating the shoulder turn during the takeaway in the back swing. Additionally, the Cole patent discloses an indicator arm that is an elongated member and is substantially perpendicular to the shoulder of the golfer. The indicator arm includes a resilient member and is a device made of a plastic sheet that is a resilient and flexible material. The shoulder position indicator means is adjustably secured to the support member using Velcro. Also provided by the Cole patent are position retaining means, an indicator member, a pad, a support member that is located over the forward shoulder of the golfer relative to the swing, attachment means including a harness mechanism, a shoulder position indicator means including a first indicator member that is supported by the indicator arm, and the second indicator member located adjacent to the shoulder of the golfer.

It is undisputed that the Cole patent clearly describes a device indicating "a proper or improper arm orientation" as stated in columns 3 and 4 of the Cole patent. However, one's arms move independently from one's shoulders and therefore the device of the Cole patent does not give an indication of shoulder turn, but merely indicates the position of the arms. The device of the Cole patent is located on the upper arm or leg of a golfer and therefore the movement of the shoulder cannot be determined since it is the movement of the arms that is being indicated.

The present invention solves a problem, namely the ability to provide accurate information of the shoulder turn without giving any indication of arm movement. As described on page 6, lines 29-31, of the present invention, "A typical back swing associated with many mid-to-high handicap golfers may comprise lifting only the arms." The device of the Cole patent will not indicate this problem since the indicator of the Cole patent moves correctly as a result of arm movement, thus indicating that this swing is correct, but the golfer may have an incorrect shoulder turn or no shoulder turn at all.

Additionally, the present invention also indicates the essential transfer weight onto the back foot, which is required for a correct golf swing. Referring specifically to the device of the Cole patent, the disclosed device relies on the relative movement between the indicator and the face of the golfer. See, for example, column 2, which discloses that the device of the Cole patent relies on the indicator being obscured from the vision of the golfer. If one were to take the device of the Cole patent and attempt to use it to indicate the shoulder turn of a golfer, the indicator would need to be positioned at a location that would go out of the vision of the golfer in order to indicate a correct swing. Therefore, one of skill in the art would not place the indicator of the Cole patent projecting forward from the shoulder, since this placement would always remain in the vision of the golfer and would not indicate a correct swing by going out of the vision of the golfer in accordance with the function of the device of the Cole patent. In contradistinction, the device of the present invention as described at page 11, lines 7-13 and 25-29, remains in vision and thereby provides more accurate feedback. Additionally, the present invention provides a different method of indicating a correct swing while always remaining visible to the golfer, as opposed to the device of the Cole patent that indicates a proper swing by moving out of the vision of the golfer. By always remaining visible, the feedback is more accurate since once out of the vision of the golfer the golfer is not made aware of by how much or to what degree the movement is correct or incorrect.

The device of the Cole patent includes a body formed generally as a portion of a cylinder. In order for the device of the Cole patent to fit on the shoulder, it would

need to be turned 90° in order for the strap to fasten under the armpit and around the back of the shoulder. In this position, the cylindrical shaped bands could not conform to the shape of the shoulder and would stand proud of the shoulder. This would provide a very insecure attachment to the shoulder and the edges of the cylindrical body would tend to dig into the shoulder. Additionally, the indicator would tend to move relative to the shoulder and would therefore not function so as to reflect the shoulder movement. Since the Cole patent neither describes nor suggests the golf training aid of the present invention, the claims are patentable over the Cole patent and reconsideration of the rejection is respectfully requested.

Claims 8 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Lazier patent. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent in view of the Lazier patent, as applied to the claims is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Lazier patent, the Lazier patent relates to a torso and back rotation indicator that projects from the golfer's back and extends laterally to the golfer's side. As can be seen in Figures 6A-F of the Lazier patent, the indicator is not always visible since it does not project forwardly from the golfer. The main advantage of the present invention is that it projects forwardly from the shoulder of the golfer and thereby indicates the shoulder turn by always remaining visible to the golfer. Since neither the Lazier nor the Cole patent, alone nor in combination, teach nor suggest the golfer training aid of the present invention, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

Claim 11 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Stawicki patent. Reconsideration of the rejection

under 35 U.S.C. §103(a) over the Cole patent in view of the Stawicki patent, as applied to the claims, is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Stawicki patent, the Stawicki patent provides a device to permit a golfer to achieve a proper golf swing by avoiding undesired bending in the front elbow of the golfer. This therefore does not relate to the shoulder turn indicator at all. Accordingly, neither the Cole or Stawicki patents either alone or in combination, teach or suggest the golf training aid of the present invention, therefore the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

Claims 17 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent in view of the Stawicki and Pritchard et al. patents. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent in view of the Stawicki and Pritchard et al. patents, as applied to the claims, is also respectfully requested.

As stated above, the Cole patent does not disclose a training aid for use in indicating shoulder turn. Instead, the Cole patent discloses a device for use in indicating proper or improper arm. Therefore, the Cole patent neither discloses nor suggests the aid of the presently pending claims.

With regard to the Stawicki patent, the Stawicki patent provides a device to permit a golfer to achieve a proper golf swing by avoiding undesired bending in the front elbow of the golfer. This therefore does not relate to the shoulder turn indicator at all.

The Pritchard et al. patent provides an inflatable pad for cushion of a strap and is not directed towards a golf shoulder turn indicator. Further, even if it were combined with the aids disclosed by the Stawicki or the Cole patents it would not provide the aid of the present invention. Since neither the Cole, Stawicki, or Pritchard et al. patents alone or in combination, describe nor suggest, the aid of the presently pending application, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

Claims 21-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Cole patent. Reconsideration of the rejection under 35 U.S.C. §103(a) over the Cole patent, as applied to the claims, is also respectfully requested.

The Office Action states that the Cole patent describes obvious steps that are used when using the device of the Lazier patent. The Office Action states that the Cole patent discloses a golf swing indicator comprising attachment means for attaching a support member adjacent to the shoulder of a golfer, wherein the support member has a shoulder position indicator means/arm projecting outwardly therefrom and forwardly relative to the golfer, and that the golf training aid is used for indicating the shoulder turn during the takeaway in the back swing. Additionally, the Cole patent discloses an indicator arm that is an elongated member and is substantially perpendicular to the shoulder of the golfer. The indicator arm includes a resilient member and is a device made of a plastic sheet that is a resilient and flexible material. The shoulder position indicator means is adjustably secured to the support member using Velcro. Also provided by the Cole patent are position retaining means, an indicator member, a pad, a support member that is located over the forward shoulder of the golfer relative to the swing, attachment means including

a harness mechanism, a shoulder position indicator means including a first indicator member that is supported by the indicator arm, and the second indicator member located adjacent to the shoulder of the golfer.

It is undisputed that the Cole patent clearly describes a device indicating "a proper or improper arm orientation" as stated in columns 3 and 4 of the Cole patent. However, arms move independently from shoulders and therefore the device of the Cole patent does not give an indication of shoulder turn, but merely indicates the position of the arms. The device of the Cole patent is located on the upper arm or leg of a golfer and therefore the movement of the shoulder cannot be determined since it is the movement of the arms that is being indicated. The present invention solves a problem, namely the ability to provide accurate information of the shoulder turn without giving any indication of arm movement. As described on page 6, lines 29-31, of the present invention, "A typical back swing associated with many mid-to-high handicap golfers may comprise lifting only the arms." The device of the Cole patent will not indicate this problem since the indicator of the Cole patent moves correctly as a result of arm movement, thus indicating that this swing is correct, but the golfer may have an incorrect shoulder turn or no shoulder turn. Additionally, the present invention also indicates the essential transfer weight onto the back foot, which is required for a correct golf swing. Referring specifically to the device of the Cole patent, this device relies on the relative movement between the indicator and the face of the golfer. See, for example, column 2, which discloses that the device of the Cole patent relies on the indicator being obscured from the vision of the golfer. If one were to take the device of the Cole patent and attempt to use it to indicate the shoulder turn of a golfer, the indicator would need to be positioned at a location that would go out of the vision of the golfer in order to indicate a correct swing. Therefore, one of skill in the art would not place the indicator of the Cole patent projecting forward from the shoulder, since this placement would always remain in the vision of the golfer and would not indicate a correct swing by going out of the vision of the golfer in accordance with the function of the device of the Cole patent. In contradistinction, the device of the present invention as described at page 11, lines 7-13 and 25-29, remains in vision and thereby provides more accurate feedback. Additionally, the present invention provides a different method of

indicating a correct swing while always remaining visible to the golfer, as opposed to the device of the Cole patent that indicates a proper swing by moving out of the vision of the golfer. By always remaining visible, the feedback is more accurate since once out of the vision of the golfer the golfer is not made aware of by how much or to what degree the movement is correct or incorrect.

The device of the Cole patent includes a body formed generally as a portion of a cylinder. In order for the device of the Cole patent to fit on the shoulder it would need to be turned 90° in order for the strap to fasten under the armpit and around the back of the shoulder. In this position, the cylindrical shaped bands could not conform to the shape of the shoulder and would stand proud of the shoulder. This would provide a very insecure attachment to the shoulder and the edges of the cylindrical body would tend to dig into the shoulder. Additionally, the indicator would tend to move relative to the shoulder and would therefore not function so as to reflect the shoulder movement.

With regard to the Lazier patent, the Lazier patent relates to a torso and back rotation indicator that projects from the golfer's back and extends laterally to the golfer's side. As can be seen in Figures 6A-F of the Lazier patent, that the indicator is not always visible since it does not project forwardly from the golfer. The main advantage of the present invention is that it projects forwardly from the shoulder of the golfer and thereby indicates the shoulder turn by always remaining visible to the golfer. Since neither the Lazier nor the Cole patents, alone nor in combination, teach nor suggest the golfer training aid of the present invention, the claims are patentable over the cited prior art references and reconsideration of the rejection is respectfully requested.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC

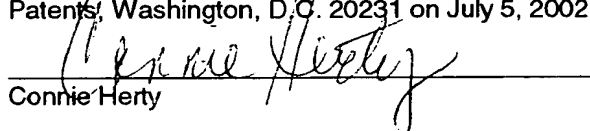


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on July 5, 2002.


Connie Herty

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

Page 4, Lines 23-32:

The attachment means may comprise a harness mechanism. The harness mechanism may comprise a first harness member and may further comprise a second harness member. [The or e] Each harness member preferably comprises a flexible material and preferably a resilient material. [The or e] Each harness member may comprise an elasticated material. The length of [the or] each harness member may be adjustable. [The or e] Each harness member may comprise release means in order to releasably secure the harness mechanism to the golfer.

Page 8, Lines 13-23:

The indicator arm 12 is secured to the shoulder pad 14 through a ball and socket joint. The ball 42 and socket 44 joint enables the indicator arm to be initially positioned relative to the golfer in order to be substantially perpendicular to the shoulder of the golfer. In addition, the ball and socket joint enables the golf training aid to be adjusted in order for golfers of differing physiques to use the golf training aid. The ball and socket joint incorporates a locking screw in order for the indicator arm 12 to be retained or locked in position relative to the shoulder pad 14.

Page 12, Lines 23-33 and Page 13, Lines 1-9:

A description of the one-piece movement from the address position to the top of the back swing now follows, this being applicable to a right-handed golfer. From the address position (shoulders parallel to ball-to-target line[-], hereinafter "bttl"), simultaneously rotate and push the left shoulder along an imaginary line which lies inside of, and is parallel to, the bttl, and also extends through the ball part of the right foot. The movement is completed when the yellow indicator member 21 at the base of the white indicator arm 12 finishes over the ball part of the right foot. During the initial part of the one-piece movement the indicator arm 12 will be orientated approximately parallel to the ground. Only at the final stage of the movement, when the full 90° shoulder turn is achieved and the left shoulder position coincides with the

ball part of the right foot, will the indicator arm 12 orientation be inclined more markedly upwards due to the final rotation of the left shoulder. Note an inherent part of the one-piece movement ensures that plenty of width is maintained during the takeaway phase of the back swing.

IN THE CLAIMS:

1. (Amended) A golf training aid for indicating [the] a shoulder turn during a golf swing comprising attachment means for attaching a support member adjacent to a shoulder of [the] a golfer, the support member having shoulder position indicator means projecting outwardly therefrom and forwardly relative to the golfer.

2. (Amended) A golf training aid according to claim 1, in which the golf training aid is for use in indicating the shoulder turn during [the] a takeaway in the back swing.

4. (Amended) A golf training aid according to claim 3, in which the indicator arm is an elongated member.

7. (Twice Amended) A golf training aid according to claim 1 in which the shoulder position indicator means [in] is adjustably secured to the support member.

19. (Twice Amended) A golf training aid according to claim 1, in which the support member is locate[s]d over the forward shoulder of the golfer relative to the swing.

21. (Amended) A method of indicating the shoulder turn of a golfer during a golf swing comprising securing shoulder position indicator means [adjacent] to a shoulder of the golfer, in order for the shoulder position indicator means to project outwardly and forwardly relative to the shoulder of the golfer.

27. (New) The golf training aid according to claim 1, wherein said shoulder position indicator means can be moved in at least two planes.

28. (New) The golf training aid according to claim 27, wherein said at least two planes are perpendicular to each other.